

Drew University Policy, Use of Copyrighted Materials

- Purpose
- Scope
- Copyright
- NOTICES
- Copyright Infringement
- Sanctions for violations
 - Civil and Criminal Penalties for Copyright Infringement
- Legal Background
- The Copyright Act
- Fair Use
- Live Classroom Performances
- The Digital Millennium Copyright Act (DMCA)
- Distance Education: The Technology, Education, and Copyright Harmonization Act of 2002 (The TEACH Act)
- Student Works
- Contacts
- Resources

Appendix A

- Fair Use Checklist (PDF)
 - Factor 1: Purpose and Character of the Use
 - Factor 2: Nature of Copyrighted Work
 - Factor 3: Amount and Substantiality of Portion Used
 - Factor 4: Effect on Market for Original

It is the policy of Drew University to comply with the requirements of federal copyright law, codified as the Copyright Act of 1976 (17 U.S.C. § 101 et seq.), and as amended by the Digital Millennium Copyright Act of 1998 (Pub. L. No. 105-304, 112 Stat. 2860), and the Technology, Education, and Copyright Harmonization Act of 2002 (Pub. L. No. 107-273, 116 Stat. 1910). As a result, all faculty, staff and students of Drew University are required to meet their legal obligations and follow these policy guidelines. Faculty, students and staff are encouraged to learn more about copyright and fair use as it applies to their work and intellectual property.

Drew University employees are forbidden from knowingly violating copyright law when scanning, copying, or otherwise utilizing copyrighted documents in a classroom or on-line setting.

Purpose

A copyright policy brings the University into compliance with the requirements of federal law and provides guidance to members of the University community on their legal obligations. By implementing a copyright policy Drew is able to invoke protections or “safe harbors” that are available under federal law. These protections help insulate Drew and the members of the Drew community from certain types of copyright infringement liability.

Scope

Drew’s Copyright Policy extends to all use of copyrighted materials by University faculty, staff, and students.

Copyright

Copyright is the right of ownership over literary, musical, artistic, dramatic, or academic works. It allows the creator or owner the work of scholarly criticism, literature, or art, for example, to control how and when that work is used. Copyright is established simply by “fixing” an original work in any tangible medium, such as by writing, posting online, storing, or preserving in a video or audio format. Copyright can even cover derivative works that are adapted in new ways from an existing work.

Copyright law generally gives the owner of copyright the exclusive right to reproduce the work, prepare derivative works, distribute copies of the work, perform or display the work publicly, and grant permission for these uses. An owner of a copyright can sell, lease, license, or lend the right to the work. In addition, certain authors of works of visual art have the rights of attribution and integrity. (1)

The owner of a copyright is not required to register his or her work with the copyright office, although additional protections are afforded by registration. Copyright is established by the act of authorship and need not be accompanied by the use of the term “copyright” or by the use of the copyright symbol.

Only copyrighted materials are subject to the restrictions in this Policy Statement. Materials that are not copyrighted or are in the public domain may be copied freely and without restriction. Most works (except those authored by the United States Government), however, should be presumed to be copyright protected, unless further information from the copyright holder or an express notice reveals that the copyright holder intends the work to be in the public domain. Copyright does not include works in the public domain, unoriginal works, compilation such as phone books, many governmental works, facts, or works that may be reproduced with permission. There are works, however, that have been publicly licensed, such as Creative Commons or CopyLeft that may be used freely, subject to the limitations of those licenses.

Copyright generally lasts the life of the author +70 years for works created on or after January 1, 1978.

Violating the rights of the copyright owner is a violation of law, unless exceptions established under federal law apply. These exceptions, such as "fair use" or similar protections afforded to the transmission of performances and displays of certain copyrighted materials in educational settings under the TEACH Act, attempt to accommodate the two related, and sometimes conflicting, purposes of federal copyright law: protecting the rights and interests of copyright holders, while promoting and disseminating learning.

NOTICES

Drew University Facilities are responsible for posting notices reflecting this policy at all public computer and photocopying stations which may be used for reproducing copyrighted materials, e.g., departmental copy rooms and libraries. The following notice will be displayed at appropriate locations:

"Copyright Notice"

"Copying, displaying and distributing copyrighted works, may infringe the owner's copyright. The Conference on Fair Use Guidelines can help you determine whether your use of a copyrighted work is a fair use or requires permission. Any use of computer or duplicating facilities by students, faculty or staff for infringing use of copyrighted works is subject to appropriate disciplinary action as well as those civil remedies and criminal penalties provided by federal law."

Copyright Infringement

Copyright infringement involves interfering with or misappropriating another's ownership rights. The copyright owner has an economic interest in his or her work. Unauthorized copying deprives owners of that economic benefit and value. Even materials posted on the Internet are frequently protected by copyright law. As result, copyright infringement can include copying the contents of material on the Internet or using video clips or sound recordings without permission.

The unauthorized duplication, distribution or use of someone else's intellectual property, including software, sound recordings, articles, or books, unless permitted under the "fair use" doctrine, for example, is illegal and is subject to criminal and civil penalties.

In the event copyright infringement is alleged, the University and/or its members will be able to best defend against any such claim:

- where the use is in accordance with the provisions of a valid software license agreement,
- where the use is within the Conference on Fair Use Guidelines
- where the use in an online setting complies with the requirements of the TEACH Act
- where the permission of the copyright owner has been obtained, or
- where University Counsel has determined that the use is otherwise permissible.

Failure to comply with these requirements could result in litigation against the University and its members, as well as the assessment of costs and damages.

Sanctions for violations

Violations of copyright laws can result in civil and criminal prosecution. Claims can be asserted against individuals, who are found to have violated copyright laws, as well as against the University.

Civil and Criminal Penalties for Copyright Infringement

Penalties for copyright infringement include civil and criminal penalties. In general, anyone found liable for civil copyright infringement may be ordered to pay either actual damages or "statutory" damages affixed at not less than \$750 and not more than \$30,000 per work infringed. For "willful" infringement, a court may award up to \$150,000 per work infringed. A court can, in its discretion, also assess costs and attorneys fees. For details, see Title 17, United States Code, Section 504,505.

Willful copyright infringement can also result in criminal penalties, including imprisonment of up to five years and fines of up to \$250,000 per offense. For more information, please see the Web site of the U.S. Copyright Office at: www.copyright.gov

Legal Background

Copyright law has a constitutional basis and dimension. Article I, Section 8, Clause 8 of the United States Constitution authorizes Congress to enact legislation designed to "promote the Progress of Science and useful Arts by securing for limited Times to Authors and Inventors, the exclusive Right to their respective Writings and Discoveries."

The Copyright Act

- Federal copyright law defines copyright and any available exemptions.
- Grants to the copyright owner the right to reproduce the copyrighted work, prepare derivative works, distribute copies, and perform them.
- Establishes the time periods governing copyright ownership and their renewals.

- Works, especially creative works, published between 1923 and 1978, are protected for a term of 95 years from the date of original publication if the creator renewed the copyright;
- Never-published works created before 1978 are protected for 70 years after the death of the creator; and,
- Works created after 1978, published or not, are protected for 70 years after the death of the creator, or, if a work of corporate authorship, 95 years from publication or 120 years from creation, whichever expires first.

Fair Use

Section 107 of the Copyright Act of 1976 addresses permissible “fair use” of copyrighted materials for purposes such as criticism, comment, news reporting, teaching, scholarship, or research in the classroom setting. The fair use doctrine limits the extent of the copyright holder’s exclusive ownership rights by permitting a portion of a copyrighted work to be used without permission in certain circumstances. The broad underlying purpose of fair use is to permit new works to build upon existing works by permitting access. Whether a use constitutes “fair use” is fact-sensitive and depends on the individual circumstances of each intended use. For this reason, a conclusive determination cannot be made in the abstract and considerations appropriate to each use should be carefully evaluated prior to each use.

Four factors are applied to the facts of each use in order to determine whether the intended use is protected as “fair use.” The four factors utilized in evaluating fair use are:

- the purpose and character of the use, for example whether the use is properly characterized as commercial use or for nonprofit educational purposes, or fundamentally transformative,
- the nature of the copyrighted work, for example, the use of purely factual information (statistics, lists) is more likely to constitute fair use than the use of creative works, such as fiction or poetry,
- how much of the copyrighted work is utilized in relation to the work as a whole, and
- the effect of the use upon the market or value of the copyrighted work, or in other words how does the use effect the owner’s economic interests.

A fair use determination cannot be made mechanically, merely by adding up checks on a scorecard. Although no single factor is conclusive, economic impact is significant. Relevant factors must be balanced and weighed in relation to each other. Any faculty or staff member relying on fair use protections should carefully consider the fair use factors, maintain documentation of their decision, and seek permission if they decide to use content that exceeds accepted limitations, such as 10% of the overall work. A form of checklist widely used by institutions of higher education and libraries is attached as an appendix; faculty should utilize it when making their determinations and maintain a copy in their records.

Please note, different rules apply to the transmission of performances or displays in distance education. Those rules are discussed in more detail below in the section addressing distance education and the federal TEACH Act.

Live Classroom Performances

Specific rules apply to live or recorded performances or displays in classrooms of a nonprofit educational institution. Section 110 allows instructors or pupils at non-profit educational institutions to perform or display the copyrighted work, whether live or recorded, in the course of face-to face teaching activities. Any copy of a work being performed or displayed must, however, be lawfully made.

The Digital Millennium Copyright Act (DMCA)

Congress adopted the DMCA in 1998 in order to address the problems associated with copyright enforcement and protection in an online and digital age. The DMCA includes provisions intended to protect Internet service providers from liability for copyright infringement by their users if the provider adopts technology to prevent circumvention of copyright protections. Drew meets these requirements and, among other things, will comply with appropriate “takedown” notices issued to the University by copyright owners.

Distance Education: The Technology, Education, and Copyright Harmonization Act of 2002 (The TEACH Act)

The TEACH Act amended section 110 of the Copyright Act, to address copyright in the context of distance education/online instruction offered by non-profit educational institutions. Distance learning was simply not considered when the Copyright Act was first adopted in 1976. As amended, section 110 now carefully defines the limited circumstances under which non-profit educational institutions may transmit performances or displays of some copyrighted materials in distance education without seeking permission or paying any royalties. In order to invoke these protections, however, specific conditions must be met. Significantly, the TEACH Act:

- Requires an institutional copyright policy. Without a copyright policy, the protections afforded under the TEACH Act are not available to the institution or the instructor.
- Prohibits the use of copyright-protected works created and marketed for distance learning courses without paying for the right to do so, and
- Does **not** apply to textbooks, course packs or software typically purchased by students for use in courses.

The TEACH Act allows only certain categories of copyrighted works to be transmitted in a distance learning setting. Permitted uses include:

- the transmission of performances of non-dramatic literary works which are not in an audiovisual form, such as poems or short stories, as well as some musical works, but not operas, music videos and musicals.
- clips of dramatic works, such as movies, may be shown, but the length of any clip must be reasonable and limited.

- any works performed must be at the direction of the instructor, offered as an “integral” is part of the class session, as part of “systematic mediated instructional activities,” and be directly related and of material assistance to the promotion of the teaching content.

Note: the term “mediated instructional activity” acts as a limitation on the scope of this exception by restricting what can be used to the kinds of materials an instructor would actually incorporate into a class-time lecture. In other words, the **TEACH Act covers the type of works an instructor would show or play during class**, such as movie or music clips, images of artworks in an art history class, or a poetry reading.

Materials that cannot be used include:

- performances or displays of works that were not lawfully made or acquired, and
- copyrighted instructional materials which are commercially available and marketed.

The TEACH Act requires Drew to:

- Pursue ongoing efforts to provide information and educate students, staff and faculty about copyright compliance. (e.g. written materials, face-to-face workshops, website, information provided as part of distance learning).
- Implement appropriate technological measures to prevent the unauthorized use, access, or distribution of copyrighted materials.
- Limit distribution of course content to the sole use of enrolled students. (e.g. password protections restricted to registered students). Unsecured websites do not meet this requirement.
- Time limit the availability of copyrighted material to the course’s time period requirements; recipients must not be able to retain the work for longer than the class session.
- Limit the use solely to students officially enrolled in the course.
- Require faculty to provide copyright notices to students that materials used in connection with a course may be subject to copyright protection.

Student Works

- Students retain ownership of their work, unless otherwise agreed upon, as in the case of an employment agreement.

Contacts

- Copyright Policy Administrator for Printed Media -- Jennifer Heise, jheise@drew.edu, 973-408-3675

Resources

- Title 17, United States Code, Copyright Act: <http://www.copyright.gov/title17/>
- Conference on Fair Use Guidelines: <http://www.uspto.gov/web/offices/dcom/olia/confu/confurep.pdf>
- Copyright Office Circular 21: Reproduction of Copyrighted Works by Educators and Librarians <http://www.copyright.gov/circs/circ21.pdf>
- Copyright Office Circular 22: Investigating Copyright status of a Work: <http://www.copyright.gov/circs/circ22.html>
- Copyright Office Flyer 102: Fair Use: <http://www.copyright.gov/fls/fl102.html>
- Stanford Copyright and Fair Use Center: <http://fairuse.stanford.edu/>
- Copyright Crash Course from the University of Texas: <http://copyright.lib.utexas.edu/>
- Know Your CopyRights: <http://www.knowyourcopyrights.org/>
- Georgia State University Board of Regents Fair Use Checklist: http://www.usg.edu/images/copyright_docs/fair_
- Fair Use Considerations Checklist from Colombia University: <http://copyright.columbia.edu/copyright/files/2009/10/fairusechecklist.pdf>

(1) The right of attribution protects the author's right to be known as the creator of a work, prevents others from claiming that authorship and from having other works falsely attributed to him or her. The right of integrity refers to an author's right to prevent alteration of the work that would jeopardize the author's honor or reputation.

Appendix A

Fair Use Checklist (PDF)

Name:

Date:

Class or Project:

Course and Term:

Title of Copyrighted Work:

Author and Publisher:

Portion(s) to be used (e.g., pages, timer counts):

Instructions: Check only those facts that apply to your use. No single item or factor is determinative of fair use. Total up the number of checkmarks to give an approximate weighting for comparison purposes.

Where the factors favoring fair use outnumber those against it, reliance on fair use is justified. Where fewer than half the factors favor fair use, instructors should seek permission from the rights holder. Where the factors are evenly split, instructors should consider the total facts weighing in favor of fair use as opposed to the total facts weighing against fair use in deciding whether fair use is justified. Not all of the facts will be present in any given situation.

For more information regarding the fair use factors, please see the fair use information provided by the Copyright Education Committee at _____

Complete and retain a copy of this checklist for each "fair use" of a copyrighted work in order to establish a "reasonable and good faith" attempt at applying fair use should any dispute regarding such use arise.

Factor 1: Purpose and Character of the Use	
<i>Weights in Favor of Fair Use</i>	<i>Weights Against Fair Use</i>
Nonprofit Educational Institution	Commercial activity, profit from use
Used for Purpose of Teaching (including multiple copies for classroom use) and/or Scholarship or Criticism, Comment, News Reporting, or Parody	For public distribution
Used for noncommercial, nonprofit educational use	Used for entertainment
Transformative (use changes work for new utility or purpose)	Mirror image copying
Use is necessary to achieve your intended educational purpose	Use exceeds that which is necessary to achieve your intended educational purpose
___ <i>Factors Weighing in Favor of Fair Use</i> __	___ <i>Factors Weighing Against Fair Use</i> __
Factor 2: Nature of Copyrighted Work	
<i>Weights in Favor of Fair Use</i>	<i>Weights Against Fair Use</i>
Published work	Unpublished work
Factual/informational and educational in nature or nonfiction work	Fiction or highly creative work (art, music, novels, films, plays, poetry)
Non-consumable work	Consumable work (workbook, test)
___ <i>Factors Weighing in Favor of Fair Use</i> __	___ <i>Factors Weighing Against Fair Use</i> __
Factor 3: Amount and Substantiality of Portion Used	
<i>Weights in Favor of Fair Use</i>	<i>Weights Against Fair Use</i>
Decidedly small portion of work used (no more than 10% of work not divided into chapters or having less than 10 chapters or no more than 1 chapter of a 10 or more chapter work)	Large portion or entire work used (more than 10% of work not divided into chapters or having less than 10 chapters or more than 1 chapter of a 10 or more chapter work)
Portion used is not central or significant to entire work as a whole	Portion used is central to work or "heart of the work"
Amount taken is narrowly tailored to accomplish a demonstrated, legitimate purpose in the course curriculum and must be narrowly tailored to accomplish that purpose	Amount taken is more than necessary to accomplish a demonstrated, legitimate purpose in the course curriculum or is not narrowly tailored to accomplish a demonstrated legitimate purpose in the course curriculum
Access limited to students enrolled in course for only the term of the course	Access not limited
___ <i>Factors Weighing in Favor of Fair Use</i> __	___ <i>Factors Weighing Against Fair Use</i> __

Factor 4: Effect on Market for Original	
<i>Weights in Favor of Fair Use</i>	<i>Weights Against Fair Use</i>
Permission for digital excerpt is not readily available from publisher or Copyright Clearance Center at a reasonable price	Permission for digital excerpt is readily available from publisher or Copyright Clearance Center at a reasonable price
Decidedly small portion used	Large portion or entire work used
User owns lawfully acquired or purchased copy of original work	User does not own lawfully acquired or purchased copy of original work
Use stimulates market for original work	Use impairs the market or potential market for original work
___ _Factors Weighing in Favor of Fair Use_	___ _Factors Weighing Against Fair Use_

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